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CREATING FREEDOM: BIRMINGHAM, 1963, A LEGAL SERMON IN CELEBRATION OF MARTIN LUTHER KING JR.'S BIRTHDAY, JANUARY 15, 1999*

*Samuel H. Pillsbury***

I. INTRODUCTION

In the early 1960s, I was a boy, living in a boy's small world, just starting to glimpse the larger world beyond my own. From the window made by television news, daily papers, and magazines, from the talk of adults and sometimes of other children, I looked out on the strange, frightening, and somehow wonderful dramas going on in foreign places like Washington, D.C., Birmingham, and Selma.

I remember being mystified by the civil rights struggle. Living in a nearly all-white world it seemed most strange, this obviously passionate and bitter conflict. Why would white people care so much about where black people ate lunch or went to school?¹ News of the conflict reminded me of the religious wars of old Europe: The bitterness and fury of the combat seemed far in excess of the differences between the combatants. When at the end of my third-grade year I heard another boy ask what we thought about "niggers" coming to our school next year, the boy's evident anger and revulsion

* The following is a revision of a talk given in celebration of Martin Luther King Jr.'s birthday at Loyola Law School in Los Angeles, on January 15, 1999. Had he lived, he would have turned 70 on this day.

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1. Living in a largely white world, I had no concept of the struggle from the black perspective.

seemed bizarre.² The year before, my teacher had been black and she was the best and kindest teacher I had ever had. What was he talking about? Where did this rage come from?

I remember a summer of watching protests and speeches and debates on television with my parents, leading up to the March on Washington in September of 1963. After the March, I remember asking my mother if its success meant there would be civil rights now. I wanted to know if the battle was over. From the way they talked about the march on TV, it seemed to be. I remember being astonished when she said "no," that it would go on for a long time.

As I grew up, I learned more about the problems of race relations, and they became less mysterious. They also became more personal, more part of my life instead of something outside it. And issues of civil rights have gradually become an important part of my work. I have come to believe that the civil rights struggle, the struggle for equal respect among groups, lies at the heart of the best and the worst of our country and the best and worst of our law.

Today I want to go back to the civil rights struggles of the early sixties, and with the advantages of adult hindsight, consider some of the horror and some of the glory of those days when an important part of modern American freedom was created. In particular, I want to go back to the Birmingham campaign of the spring of 1963, when some committed young people, with the help of some of their elders, changed the hearts and minds of many adults in this United States of America about freedom.³

2. This was in an elementary school in a white middle class section of Princeton, New Jersey. The student's comments were almost certainly inspired by the town's adoption of a voluntary school integration plan.

3. The literature on the modern civil rights movement is extensive. *See, e.g.*, TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63* (1988); GLENN T. ESKEW, *BUT FOR BIRMINGHAM: THE LOCAL AND NATIONAL MOVEMENTS IN THE CIVIL RIGHTS STRUGGLE* (1997); DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* (1986); DAVID HALBERSTAM, *THE CHILDREN* (1998); HOWELL RAINES, *MY SOUL IS RESTED: MOVEMENT DAYS IN THE DEEP SOUTH REMEMBERED* (1977).

II. FREEDOM AND POWER

One of the paradoxes of freedom in America is that despite its uniquely honored place in national ideology, freedom remains deeply controversial. So much of our national pride is bound up in freedom. We declare that ours is a free country, the home of the free and the brave. Our Constitution protects freedom of religion and freedom of the press; opportunity is the principle undergirding our economy; democracy the central tenet of our political system. We celebrate freedom because we are Americans. Because we are Americans we celebrate freedom. It is our collective faith.

And yet this consensus on freedom quickly breaks down when we take up the specifics of our lives. When we must decide what to permit on the Internet, or whether there should be prayer in school, or gun regulation, or affirmative action, then the fight begins. It begins because, although we think of freedom as something each of us should enjoy to the fullest, untrammelled by the preferences of the powerful, in the end freedom is defined by power. The real freedom of a people depends on who has power, how they exercise that power, and what limits the society places on its exercise. The question is not who will have the most freedom; that privilege will always go to the powerful. The question is how much freedom the rest will have.

In our society we rely heavily on law to secure both freedom and order, concepts often opposed, but always interdependent. We have committed ourselves to law to mandate a minimum of freedom. We have committed to the principle that only through law can the few, the unpopular, and the unmonied, have any chance for the freedom to lead a decent and dignified life. This means that the story of freedom in this country is also the story of our law. It means that to create freedom—and regardless of what political theorists say about the state of nature, freedom is something created not found—to create freedom is also to create law. By law here I mean not only the statutes, regulations, constitutions, and court decisions of formal law, but also the principles that inform our rules, the visions that lie behind legal pronouncements. Thus, although today's story is about court decisions and legislation, it is also about visions of freedom. Before we could change our law of civil rights, we had to change our vision of freedom in America.

III. COMPETING VISIONS OF FREEDOM IN AMERICA, 1963

Before we can begin our actual story we need some background, some history. As a historian—I teach legal history among other things here at the law school—I am tempted to go back at least to the American Revolution and perhaps to the English Revolution a century earlier. I would like to talk about the grand traditions of Anglo-American political liberty and its many shortcomings, to talk about the Declaration of Independence and slavery and the United States Constitution, both as originally adopted and as amended by the Civil War, to talk about Reconstruction and its brutal demise. I would like to do all these things—but fear not—I won't. This history is too big to be told today.

For today it must be enough to remember that in 1963 a powerful system of racial apartheid operated in the United States; it touched nearly every aspect of public and private life in America. It had the effect of, and was designed to, promote white supremacy. While it was most obvious and brutal in the deep South, it operated in some form in every part of the nation that had a significant population of African Americans.⁴

By the early 1960s, many Americans had become uncomfortable with the nation's way of dealing with race. Many whites were embarrassed by segregation and the racial attitudes which gave it life and strength. Yet embarrassment proved a weak force for change when confronted with the fierce resistance of many whites who opposed any alteration in traditional racial ways, who saw the fight for segregation as their own freedom struggle. The result was a nation badly divided over racial ideals and the necessity and pace of change.

4. See generally GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944) (the most widely read book on race relations in mid-century America); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1955) (the classic work on segregation at mid-century); LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* (1998) (detailing the worst years of segregation); JAMES T. PATTERSON, *GRAND EXPECTATIONS: THE UNITED STATES, 1945-1974*, at 375-406 (1996) (a brief account of race relations in the post-war period through the mid-fifties); WILLIAM T. MARTIN RICHES, *THE CIVIL RIGHTS MOVEMENT: STRUGGLE AND RESISTANCE* (1997) (a more extensive overview of the modern civil rights movement); ROBERT WEISBROT, *FREEDOM BOUND: A HISTORY OF AMERICA'S CIVIL RIGHTS MOVEMENT* (1990) (discussing the rise of white extremism and reactions to it by the black community).

As with many of our most emotional political issues, most voters probably wished the whole problem would just go away.

One small example of the nation's mixed feelings was the fate of *Brown v. Board of Education*,⁵ the United States Supreme Court's unanimous decision in 1954 invalidating racial segregation in public schools. The decision was hailed in many parts of the country as a landmark of American freedom; in others it was excoriated as an act of tyranny and oppression.⁶ In the South, the *Brown* decision inspired a campaign of "massive resistance" against federal judicial authority, fomented by elected officials, from senators to governors to mayors and school boards.⁷ As a result of this resistance, and a reluctance on the part of the Supreme Court and other federal tribunals to demand immediate action, by 1963 the decision had had little impact on segregated schools in the South. At the elementary, high school, and even in some instances, college or graduate school levels, separation of the races was a fact of life in public education in the South. Indeed, the same was true at the great majority of public schools throughout the nation.

To gain some sense of the nation's divisions on the subject of freedom and race, we may turn to three of the nation's most famous freedom advocates of the day. Each of these men spoke for critical constituencies, each advocated a particular—and different—vision of freedom in America. I speak now of John F. Kennedy, George C. Wallace, and Martin Luther King Jr.

A. John F. Kennedy

For John F. Kennedy, freedom in America depended on victory in the cold war, on the military, economic, and intellectual triumph

5. 347 U.S. 483 (1954).

6. For overviews of the reaction, see MORTON J. HORWITZ, *THE WARREN COURT AND THE PURSUIT OF JUSTICE* 25 (1998); PATTERSON, *supra* note 4, at 389-95. See also RICHARD KLUGER, *SIMPLE JUSTICE* (1975) (the classic study of the *Brown* case and the litigation campaign of which it was a part); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, at 168-86 (1994) (describing social reaction and the Court's analysis of the law in *Brown*).

7. See TUSHNET, *supra* note 6, at 232-71; KLUGER, *supra* note 6, at 896-902, 905-19, 848-57.

of democratic capitalism over communism, particularly the communism of the Soviet Union and its European allies. On that cold January day in Washington, D.C., in 1961 when a hatless JFK gave the inaugural address that signaled the beginning of his New Frontier, he opened with words of freedom. "We observe today not a victory of party but a celebration of freedom—symbolizing an end as well as a beginning—signifying renewal as well as change."⁸ As he continued, he spoke to the nation about the United States' place in the world, and about its role in the cold war:

In the long history of the world, only a few generations have been granted the role of defending freedom in its hours of maximum danger. I do not shrink from this responsibility—I welcome it. I do not believe that any of us would exchange places with any other people or any other generation. The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it—and the glow from that fire can truly light the world.⁹

For Kennedy, and for most of white America, the United States was a bastion of freedom. This nation represented the world's best hope for individual opportunity and expression, for prosperity, for peace.

In his inaugural address, President Kennedy did not speak of civil rights.¹⁰ Kennedy viewed civil rights as an issue to be managed rather than a battle his administration would join. Kennedy's thin margin of victory in 1960 over Richard Nixon depended on the support of groups with diametrically opposed views of racial civil rights: white southerners and black northerners.¹¹ In Congress, Kennedy's

8. John F. Kennedy, Inaugural Address (January 20, 1961), in JOHN F. KENNEDY, 1917-1963: CHRONOLOGY - DOCUMENTS - BIBLIOGRAPHICAL AIDS 21 (Ralph A. Stone ed., 1971).

9. *Id.* at 23-24.

10. Strictly speaking, Kennedy did make one glancing reference to civil rights in his address. At the urging of civil rights advisor Clifford Wofford, who objected to lack of any civil rights mention, Kennedy added a reference to human rights "at home and around the world." RICHARD REEVES, PRESIDENT KENNEDY: PROFILE OF POWER 39 (1993). The reference was so glancing and innocuous as to make it politically meaningless.

11. Black support for Kennedy may have been critical to his victory over Richard Nixon in several northern states. Important to securing this support was a call that John Kennedy made to King's wife, Coretta, in October of 1960, offering support when King was jailed in Atlanta. Meanwhile, Robert Kennedy had made

foreign and domestic agenda depended on the support of so-called Dixiecrats—southern conservative Democrats who were committed to maintaining segregation in the South. They personified the South's racially exclusive political system that, since the end of the last century, had effectively denied votes to most blacks.¹²

The message that emerged from the early years of Kennedy's administration was that segregation represented an unfortunate blot on the nation's freedom record that would fade away with time and quiet behind-the-scenes effort. Responsible leaders had to avoid antagonizing the extremists—those hot-heads on either side—who would, with the least encouragement, hold the nation hostage to their minority beliefs.¹³ In retrospect of course, the administration's policy was doomed. It was like the Reagan administration's notion that

calls in an effort to secure King's release. See GARROW, *supra* note 3, at 146-49; BRANCH, PARTING THE WATERS, *supra* note 3, at 355-56, 359-66, 374-77.

12. On the disenfranchisement of black voters at the end of the nineteenth century, see LITWACK, *supra* note 4, at 218-29. In many parts of the South, voting rights were not restored until passage of the Voting Rights Act of 1965. In the early sixties, the Dixiecrats had disproportionate power in Congress because of their seniority, giving them under Congressional rules control of a number of critical Congressional committees. See CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 61-62 (1977). Brauer provides a generally favorable view of the Kennedy administration's approach to civil rights. For an overview of the politics of civil rights in the early Kennedy administration, and the administration's general approach to the issue, see PATTERSON, *supra* note 4, at 473-78. Patterson also notes the extraordinary power of FBI Chief J. Edgar Hoover in the administration as an important complicating factor in the administration's handling of civil rights. In addition to having powerful political connections in Congress, Hoover's knowledge about John Kennedy's sex life gave Hoover great leverage over the administration. Hoover's personal hatred of Martin Luther King Jr. and generally racist views of blacks made the FBI a weak force, at best, in the fight to enforce civil rights in the South. See PATTERSON, *supra* note 4, at 475-77.

13. For a good account of Kennedy's cool pragmatism toward civil rights prior to the spring of 1963, see generally REEVES, *supra* note 10; PATTERSON, *supra* note 4, at 474-75. Kennedy's early approach to civil rights was colored by his view that Reconstruction—the period of federally-mandated change in the South following the Civil War—was a political and social disaster fomented by northern radicals. See BRAUER, *supra* note 12, at 16-17 (based on part of Kennedy's book *Profiles in Courage* (1955)). Kennedy evidently changed his view of the nation's racial history as a result of his own experience with southern segregationists, including events in Birmingham, and additional reading about that history, including the work of C. Vann Woodward. See BRAUER, *supra* note 12, at 238-40. For Woodward's most influential book of the period, see WOODWARD, *supra* note 4.

it could effectively negotiate with moderate leaders in revolutionary Iran; it was a policy based more on administrative needs than on a realistic assessment of the situation. But all of this is easy to say in hindsight. In the early sixties, many white Americans agreed with the Kennedy approach, a fact revealed in the press of the day. In national print reports, southern segregationists were often portrayed as archaic and destructive figures, but they were frequently paired with Negro civil rights "troublemakers." This perspective suggested that both sides of the race debate shared significant fault on the issue. As Rodney King would say more than three decades later, many Americans wondered, "Why can't we all just get along? Why must there be all this strife?" In the early sixties, for many white Americans the main aim was to remain uninvolved. The whole "Negro problem" as it was sometimes called, looked like an unholy mess.

B. George C. Wallace

For the second stop on our visions of freedom tour, we move from Washington, D.C., in January of 1961, to Montgomery, Alabama, in January of 1963. We move from the inauguration of a president to a governor, from John Fitzgerald Kennedy to George Corley Wallace.¹⁴

Wallace, the newly-elected governor of Alabama, had lost his first run for the office in 1958 because he had, in his words, been "out-niggered" by his opponent.¹⁵ In the earlier campaign, Wallace had rejected the endorsement of the politically powerful Ku Klux Klan while his opponent had accepted it. Candidate Wallace's rejection of the Klan in 1958 had brought him the endorsement of the NAACP. But in a state where few blacks could vote, this hurt more

14. See generally DAN T. CARTER, *THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW CONSERVATISM AND THE TRANSFORMATION OF AMERICAN POLITICS* (1995) (basic sources on Wallace); MARSHALL FRADY, *WALLACE: THE CLASSIC PORTRAIT OF ALABAMA GOVERNOR GEORGE WALLACE* (4th ed. 1996); GEORGE C. WALLACE, *STAND UP FOR AMERICA* (1976).

15. Will Haygood, *Alabama's Ex-Governor Wallace Dies*, BOSTON GLOBE, Sept. 14, 1998, at B7. But see Howell Raines, *George Wallace, Symbol of the Fight to Maintain Segregation, Dies at 79*, N.Y. TIMES, Sept. 15, 1998, at B10 (denying in later years that he made this statement).

than it helped. Wallace was soundly defeated. As the best politicians do, Wallace learned his lesson from this experience. In his next, successful campaign, Wallace took a hard line in defense of segregation. Shortly before inauguration in 1963, he told a group of state senators: "I'm gonna make race the basis of politics in this state, and I'm gonna make it the basis of politics in this country."¹⁶ And he did just that.

For many white southerners, freedom in America meant states' rights, it meant defending southern tradition against northern intervention and defending white rights and privileges against black encroachment. For these Americans, George Wallace spoke the truth about freedom. It was a truth based in white supremacy. After taking his oath of office, Wallace told the people of Alabama:

This nation was never meant to be a unit of one, but a unit of the many . . . and so it was meant in our racial lives. Each race, within its own framework, has the freedom to teach, to instruct, to develop . . . but if we amalgamate into the one unit . . . the freedom for our development is gone forever . . . Today I have stood where Jefferson Davis stood, and took an oath to my people. It is very appropriate then that from this Cradle of the Confederacy, this very heart of the great Anglo-Saxon Southland, that today we sound the drum for freedom . . . Let us rise to the call of the greatest freedom-loving blood that is in us . . . I draw the line in the dust and toss the gauntlet before the feet of tyranny. And I say, Segregation Now! Segregation tomorrow! Segregation forever!¹⁷

C. Martin Luther King Jr.

The third in our group of freedom-speakers is, of course, the man we honor today, Martin Luther King Jr. Like Wallace, King

16. FRADY, *supra* note 14, at 143. On Wallace's early political career, see *George Corley Wallace* (visited July 24, 1998) <http://www.archives.state.al.us/govs_list/g_wallac.html>; *Segregationist Figure George Wallace Dies*, L.A. TIMES, Sept. 14, 1998, at A1. See generally CARTER, *supra* note 14, at 68-109; FRADY, *supra* note 14, at 94-114, 120-43 (describing Wallace's early campaigns and his first term in the House of Representatives).

17. FRADY, *supra* note 14, at 145.

was a southerner and a charismatic leader who was deeply involved in the South's, and therefore the nation's, problems with race. But in most respects, the parallels between King and the first of our trio, John F. Kennedy, were much closer. Both men had grown up in privileged backgrounds and showed early promise; both had powerful, highly successful fathers who expected them to accomplish great things for their respective peoples. Both King and Kennedy achieved public recognition at an early age as potential visionaries; both were superb public speakers who used the new medium of television to inspire and lead; both came to symbolize the ideals of their times; and both men met the same awful end.¹⁸

In his brief time on the public stage prior to 1963—King had been drafted into leading Montgomery's bus boycott of 1956 as a young preacher—King had incorporated a prophetic and challenging Christianity with philosophy of Gandhian nonviolent challenge to power. Like many great leaders, he was less an original thinker than an original synthesizer. He saw connections where others saw only difference. He labored to, and succeeded in, inspiring hope and dedication where others would have succumbed to rage and resentment.

Unlike Kennedy and Wallace, King was not a politician. He never ran for public office, never held any government post. He was a Baptist minister, a preacher, and his vision of freedom came out of his Christian faith. We gain a sense of King's vision in a sermon he gave at his Dexter Avenue church in Montgomery, Alabama, in 1957:

History unfortunately leaves some people oppressed and some people oppressors. And there are three ways that individuals who are oppressed can deal with their oppression. One of them is to rise up against their oppressors with physical violence and corroding hatred. But oh, this isn't the way. For the danger and the weakness of this method is its futility [A]s the Negro . . . and colored peoples all over the world struggle for freedom, if they succumb to the

18. See BRANCH, *PARTING THE WATERS*, *supra* note 3, at 841, 843-44. For a critical comparison of the two, see *id.* at 918-19.

temptation of using violence in their struggle, unborn generations will be the recipients of a long and desolate night of bitterness, and our chief legacy to the future will be an endless reign of meaningless chaos. Violence isn't the way.

Another way is to acquiesce and give in, to resign yourself to the oppression. Some people do that. They discover the difficulties of the wilderness . . . and they would rather go back to the despots of Egypt because it's difficult to get in the promised land. And so they resign themselves to the fate of oppression; they somehow acquiesce to this thing. But that too isn't the way because non-cooperation with evil is as much a moral obligation as is cooperation with good.

But there is another way. And that is to organize mass nonviolent resistance based on the principle of love. It seems to me that this is the only way as our eyes look to the future We must discover the power of love, the power, the redemptive power of love. And when we discover that, we will be able to make of this old world a new world. We will be able to make men better. Love is the only way. Jesus discovered that.¹⁹

IV. SETTING THE SCENE

In early 1963, King and the civil rights organization he led, the Southern Christian Leadership Council (SCLC), planned a public action campaign to eliminate segregation in business facilities in downtown Birmingham, Alabama, and to establish a measure of racial equity in employment in the city. The campaign was audacious. The SCLC planned nothing less than a frontal assault on the civic fortress of a three-and-a-half-century-old legal, political, and cultural tradition of white supremacy. It was to be a confrontation with political and economic power by the disenfranchised and unmonied. It was to be war fought with words and physical sacrifice.²⁰

19. Martin Luther King, Jr., *Loving Your Enemies*, Address before the Dexter Avenue Baptist Church, Montgomery, Alabama (Nov. 17, 1957), in *A KNOCK AT MIDNIGHT: INSPIRATION FROM THE GREAT SERMONS OF REVEREND MARTIN LUTHER KING, JR.* 56-57 (Clayborne Carson & Peter Holloran eds., 1998).

20. See BRANCH, *PARTING THE WATERS*, *supra* note 3, at 688-92; ESKEW, *su-*

King and his followers hoped to force the white power structure of Birmingham to the bargaining table by the combined force of an economic boycott of downtown businesses by black consumers and mass demonstrations against segregation. These techniques had proved successful in several earlier campaigns in the South but they had also failed—notably in the SCLC's most recent campaign in Albany, Georgia—and prospects for success in Birmingham, one of the most fiercely segregated cities in the South, were not good.²¹

King and the SCLC planned to coordinate their efforts with the local anti-segregation efforts led by the aggressive and fearless Reverend Fred Shuttlesworth, but the local movement was strong neither in money nor numbers. Worse, much of the black leadership of Birmingham opposed King's intervention.²² Meanwhile, in Washington, the Kennedy administration was very much against the campaign. It seemed to present a lose-lose proposition. If the campaign failed, the administration would be vulnerable to criticism from liberals who believed it did not do enough to help. Yet significant support for King from the administration might provoke a revolt by the conservative wing of Kennedy's fragile political coalition. Making it all the worse, the campaign appeared to be a loser. King and his fellow preachers were going to topple the power structure of Birmingham, Alabama? How likely was that?

In Birmingham, a city built around the steel industry, whites had devised an economic and legal system to maintain a strict hierarchy of class and race. For blacks, it was considered the toughest city in the South, combining a powerful political, economic, and legal machine committed to maintaining racial hierarchy, with an extra-legal terrorist movement ready to use violence against black dissidents.²³

pra note 3, at 193-216; GARROW, *supra* note 3, at 225-30.

21. On the failure of the Albany campaign and background to Birmingham, see BRANCH, *PARTING THE WATERS*, *supra* note 3, at 525-61; ESKEW, *supra* note 3, at 19-52; GARROW, *supra* note 3, at 173-230.

22. For a detailed account of the interaction between the local civil rights movement led by Shuttlesworth, the traditional black leadership of the city comprised of other ministers and businessmen, and the national civil rights movement led by King, see ESKEW, *supra* note 3. Many in the civil rights movement found Shuttlesworth extremely difficult to work with, viewing him as both autocratic and fanatical in his approach to combating segregation. See GARROW, *supra* note 3, at 237-38.

23. For an excellent portrait of the city and its oppressive structures, see

Blacks called the city "Bombingham" for the number of political bombings suffered by blacks. Between 1947 and 1965, there were some fifty racially-motivated bombings in the city.²⁴ In Birmingham, blacks held the lowest level jobs in all sectors of the economy, including the steel industry. All public facilities were rigidly segregated. The city had closed its parks rather than comply with a court order to integrate them. The city had given up its professional baseball team rather than permit it to play integrated teams.²⁵

Birmingham's symbol of segregated power was Eugene "Bull" Connor, the city's public safety commissioner, and candidate for mayor. Bull Connor—who had earned his nickname not for his aggression or propensity to violence, but for the way he could talk—was a central figure in the drama that King and other leaders hoped to stage. They had assigned Connor the role of the heavy, the bad guy whose race hate and brutality would horrify otherwise disinterested observers. The Birmingham campaign was designed to antagonize him, albeit by nonviolence. It was a dangerous strategy on several grounds: He might not react, leaving the campaign without the drama they needed to win larger public support. Or he might react with murderous force. In planning meetings, King often said that he did not think they would all survive the Birmingham campaign.²⁶

At its inception, the campaign was criticized as ill-advised, not just by segregationists, but by racial liberals and moderates. It was launched when Connor was locked in a mayoral contest with his somewhat more moderate opponent Albert Boutwell. Many racial liberals feared the campaign would create a white backlash that would favor the reactionary Connor. Local black leaders expressed the fear that King and his group would come in to stir up trouble, gain national publicity, and when they had personally benefited from

ESKEW, *supra* note 3, at 7-14, 53-121.

24. See ESKEW, *supra* note 3, at 53-54. The most infamous of all the bombings in Birmingham came after the events told here: the bombing of the Sixteenth Street Baptist Church on September 15, 1963 that killed four teenage girls. See TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65*, at 137-39 (1998).

25. See ESKEW, *supra* note 3, at 105-06; BRANCH, *PARTING THE WATERS*, *supra* note 3, at 592.

26. For background on Connor, see ESKEW, *supra* note 3, at 89-119.

the attention, would leave to let local residents face the consequences—to live, perhaps, with an even more hostile Mayor Bull Connor. *Time* magazine stated in April of 1963: "To many Birmingham Negroes, King's drive inflamed tensions at a time when the city seemed to be making some progress, however small, in race relations."²⁷ The *Washington Post* editorialized that the campaign was of "doubtful utility" and was "prompted more by leadership rivalry than by the real need of the situation."²⁸

V. THE CAMPAIGN

A. Round One—A Rocky Start

The campaign was originally designed to bring economic pressure on the city's business leaders by shutting off black patronage at downtown businesses during the important Easter shopping period.²⁹ Leaders finally decided to delay the campaign until early April, however, in order to avoid complicating the mayoral runoff election between Boutwell and Connor.³⁰ Connor lost the election by a large margin, but pending a court challenge to the governmental reform also approved in the election, Connor and other former officials held onto their posts.³¹ This severely limited the city's ability to handle the protests.³²

In addition to the economic boycott, leaders planned to hold mass demonstrations which would both disrupt ordinary business and put financial pressure on the city by filling its jails with protesters.³³ But despite often lively nightly protest meetings, relatively few volunteered to be arrested. The lack of bodies was so dire that sometimes protesters were arrested, went to jail, bailed out, changed their

27. *The South: Poorly Timed Protest*, TIME, Apr. 19, 1963, at 31. The article noted that King had arrived in Birmingham the day after Boutwell's apparent defeat of Connor in the mayoral runoff, to start his campaign "[w]ithout consulting most of the Birmingham Negro leaders." *Id.* at 30. For background on the city politics of the day, see ESKEW, *supra* note 3, at 165-92.

28. BRANCH, PARTING THE WATERS, *supra* note 3, at 737.

29. See GARROW, *supra* note 3, at 237.

30. See *id.* at 234.

31. See *id.* at 238.

32. See *id.* at 236-38.

33. See HALBERSTAM, *supra* note 3, at 434-35.

clothes, and returned to the original protest scene to be arrested again on the same day, making the number of protesters seem larger than they were.³⁴

In the second week of the campaign, King made what he called a faith act.³⁵ With a select group of demonstrators, King violated the sweeping state court injunction authorities had obtained to bar virtually all public demonstrations in the city. King and the other protesters were promptly arrested and jailed.³⁶ As he often had in the past, King refused to post bail in protest against the injustice of segregation. The jailing of King and other leaders did not have the galvanizing effect that they had hoped it might, though. Unlike earlier jailings, no one seemed to care much that King was behind bars. It did not serve as a rallying point for the cause, either locally or nationally. After nine days in custody, King allowed himself to be bailed out, to return to a troubled street protest campaign.³⁷

History of course remembers King's Birmingham jail stay in a different light. While incarcerated, King was stung by the criticism of a group of local liberal-minded clergymen who had asked him to give up his Birmingham campaign as "unwise and untimely." King immediately set to writing a response. He wrote on newspaper margins and on note paper his lawyer managed to bring him. King's scribbles grew into his famous *Letter From the Birmingham Jail*, a work which now stands as one of his most eloquent and complete statements of his philosophy. The letter was not widely distributed until much later, though, and much of its contemporary resonance depends on what happened later in the Birmingham campaign.³⁸

B. Round Two—Sending in the Children

On leaving jail, King and other leaders faced a critical decision. Should they continue with their original strategy, hoping that it

34. See *id.* at 435.

35. See BRANCH, PARTING THE WATERS, *supra* note 3, at 729.

36. See *id.* at 728-31.

37. See *id.* at 747. On April 26, a state judge convicted King and other protest leaders of criminal contempt for violating the injunction. See *id.* at 751. These convictions were eventually upheld on appeal by the United States Supreme Court. See *Walker v. City of Birmingham*, 388 U.S. 307 (1967); HORWITZ, *supra* note 6, at 46-49.

38. See BRANCH, PARTING THE WATERS, *supra* note 3, at 737-44.

would somehow catch fire, or should they accept the proposal of James Bevel for a children's crusade, a radical plan that would put their most beloved and most vulnerable young people on the campaign's front lines.³⁹ To continue as before meant nearly certain defeat. There were almost no more adults willing or able to go to jail.⁴⁰ Just as bad, the national press was leaving town and King knew that they were critical to the campaign's success.⁴¹ The media were the lever that could move the national body. They could convert the campaign from a local to a national and even international event.

Imagine, if you will, the meetings between these two Baptist preachers, Bevel in his twenties, King in his thirties. Were I writing a play of this drama, this is where it would center—on the behind-the-scenes discussions between Bevel, King, and the rest of the SCLC leadership. King was the national figure, the pivot around whom so much else moved.⁴² Cautious, well-educated, a brilliant orator, King had become the subject of extraordinary attention and equally extraordinary and often conflicting pressures. On his shoulders he carried the weight of the local protest and the long-term welfare of blacks in Birmingham, but also much of the weight of the national civil rights movement. There would also be potentially significant international consequences for his success or failure.

Lobbying King for approval of his plan was the Reverend James Bevel, one of the most brilliant of the young student activists who had transformed the civil rights movement in the early sixties. Legendary for his flights of rhetoric, his boldness and his eccentricity, Bevel had shaven his head and taken to wearing a yarmulke to honor the Old Testament prophets and overalls to honor the southern poor. Bevel was widely distrusted by the older generation of preachers that surrounded King, and he made King uncomfortable, as well. Bevel pushed when King did not want to be pushed, yet King never pushed

39. *See id.* at 752-55.

40. *See id.* at 727-28.

41. *See id.* at 754.

42. King's leadership role at this point should not be exaggerated, however. It was only following Birmingham and other events of 1963, including the March on Washington, that King assumed the national role as the man most associated with the black civil rights movement in the United States.

him away. King saw in Bevel something of great importance, a more radical voice that had to be heard.⁴³

At King's invitation, Bevel and his young wife, Diane Nash, had started to recruit college and then high school students to the Birmingham campaign. Beginning with student athletes and leaders, Bevel and Nash brought young people to workshops on nonviolent protest where they were shown a film of the Nashville student sit-ins of the 1960s. Bevel and Nash had played leading roles in the sit-ins which had broken the back of public segregation in Nashville. The movie and presentation proved inspirational. Attendees quickly signed up and went out to recruit their friends. As more and more young people joined the campaign, the ages of recruits kept going down, from college to high school to junior high and even to elementary school.⁴⁴

Bevel knew the young people they were recruiting would be critical to the Birmingham campaign.⁴⁵ Not yet caught in the tangled economic web of segregation, they were the only members of the black community truly free to protest.⁴⁶ And they were willing.⁴⁷ They brought the special energy, idealism, and dedication of the young.⁴⁸ Bevel exhorted King: send in the kids, send them all in.⁴⁹ King and his advisors resisted.⁵⁰ How could they send the youngest, most valued, most vulnerable members of the community, their hope for the future, into the angry maw of Birmingham's jails? The leadership resolved that in good conscience, no one younger than college age should be allowed to march.⁵¹ They were engaged in a war, and

43. For an extended profile of Bevel and his participation in the civil rights movement of the early sixties, see HALBERSTAM, *supra* note 3. The discussion of Bevel's advocacy of the children's campaign in Birmingham is found primarily at pages 436-43.

44. See BRANCH, PARTING THE WATERS, *supra* note 3, at 752-55; HALBERSTAM, *supra* note 3, at 438-41.

45. See HALBERSTAM, *supra* note 3, at 438.

46. See *id.* at 438-39.

47. See *id.*

48. See *id.*

49. See *id.*

50. See *id.*

51. See *id.*

in war you don't send children into danger, you fight to protect them from it.⁵²

But Bevel was not one to take no for an answer, not when he was convinced of his own rightness. He preached to the preachers, turning religious principles against their decision. Bevel argued that anyone old enough to join a church, which for southern Baptists meant school age—that is, first grade—was old enough to fight for freedom.⁵³ If the young were old enough to decide their eternal destiny, surely they were old enough to fight segregation. In any event, they could not be kept safe. These young people were already suffering from the evils of segregation. Bevel argued that if the parents could not save the children, maybe the children could save the parents.⁵⁴

In the end, King allowed Bevel's plan to go forward—not by actually endorsing it, but by refraining from saying no.⁵⁵ Bevel and others put out the word to the city's young—Thursday, May 2, 1963, was D-Day.⁵⁶ On that day, they would march on downtown.⁵⁷

C. D-Day and Beyond

D-Day started out as another day of protest, like many before it. Marchers set off from Fred Shuttlesworth's 16th Street Church in early afternoon, heading for the police lines that barred the way to downtown. They marched up to the police and were arrested. But this time the first arrests only signaled the beginning of the day's protests. Once the first wave had appeared and been taken away, a second appeared, and a third, streaming out of the church singing and marching. They quickly filled up all the available paddy wagons and police cars; finally, school buses were pressed into police service. By the end of the day, 600 protesters were in the custody of the Birmingham police department. And the nightly protest meeting was

52. On Bevel's arguments, see *id.* On the resistance of other leaders to placing young people on the front line, see BRANCH, PARTING THE WATERS, *supra* note 3, at 752-53. See also GARROW, *supra* note 3, at 247-48.

53. See HALBERSTAM, *supra* note 3, at 440.

54. See BRANCH, PARTING THE WATERS, *supra* note 3, at 755; HALBERSTAM, *supra* note 3, at 439-40, 443.

55. See ESKEW, *supra* note 3, at 261-62.

56. See *id.* at 262-64.

57. See *id.* at 261-64.

packed. Some 2000 showed up to hear King speak about how moved he was by the day's events.⁵⁸

The next day, 1000 young people set out to march.⁵⁹ It was on this second day of the children's campaign that Connor, who had showed relative restraint in deploying his forces thus far, fatefully changed tactics. With his jails filled to overflowing, Connor decided to block the protesters by force. Eschewing arrest, he would keep them from marching on downtown with fire hoses. At barricades on the road to downtown, firemen set up monitor guns—hoses with high powered nozzles mounted on tripods, advertised by their makers as capable of stripping the bark off a tree at 100 feet.⁶⁰ When the marchers approached the barricades, headed for downtown, Connor ordered the firemen to open up. Young and old, men, women, and children were blasted back. Some ran, others were knocked down by the force of the blast, some were rolled down the street like leaves before a gardener's hose, all in front of the national media.⁶¹

Later that day, other marchers found ways around the barricades, beyond the reach of the hoses. This end-around movement, combined with the action of black onlookers—not members of the campaign—who threw rocks and bricks at police and firemen, prompted Connor to deploy his last line of defense: police dogs.⁶² Images of ferocious canines snapping at defenseless protesters proved even more powerful than those of people swept away by fire hoses.⁶³ This was the turning point of the campaign, not because the violence was extreme—certainly there had been many and far worse episodes of brutality in the enforcement of racial hierarchy—but none so dramatic or well publicized. Now the world could see with its own eyes the brutality of segregation.⁶⁴

With the advent of the child marchers, the attitude of the mainstream press changed. Instead of annoyance and skepticism, writers

58. See BRANCH, PARTING THE WATERS, *supra* note 3, at 757; ESKEW, *supra* note 3, at 264-66.

59. See BRANCH, PARTING THE WATERS, *supra* note 3, at 758.

60. See *id.* at 759.

61. See *id.* at 758-61; ESKEW, *supra* note 3, at 266-68.

62. See BRANCH, PARTING THE WATERS, *supra* note 3, at 760.

63. See *id.*

64. See *id.* at 758-64; ESKEW, *supra* note 3, at 268; HALBERSTAM, *supra* note 3, at 441.

expressed a measure of wonder, even of awe at what they witnessed. *Time* magazine, in its May 17, 1963, issue, described this scene from the protests: "And there was the little Negro girl, splendid in a newly starched dress, who marched out of a church, looked toward a massed line of pistol-packing cops, and called to a laggard friend: 'Hurry up, Lucille. If you stay behind, you won't get arrested with our group.'"⁶⁵ In its issue of the same date, *LIFE* magazine published an eleven page photo essay with striking images by photographer Charles Moore of the Birmingham protests, introducing the essay this way:

The pictures on these 11 pages are frightening. They are frightening because of the brutal methods being used by white policemen in Birmingham, Ala. against Negro demonstrators. They are frightening because the Negro strategy of "nonviolent direct action" invites that very brutality—and welcomes it as a way to promote the Negroes' cause, which, under the law, is right. And they are especially frightening because the gulf between black and white is here visibly deepened.⁶⁶

D. Round Three—Settlement

The struggle in Birmingham's streets continued for more than a week, with the advantage going to the protesters. Police arrested some 2500 protesters; meanwhile, the business district was virtually shut down. Still, the outcome of the campaign remained uncertain. Every day brought new chances that the protests would turn violent and that all the public support won to date would be lost. Several days' protests were called off or cut short when widespread violence against police seemed imminent.⁶⁷

It was during this week that the Kennedy administration became actively involved in the Birmingham struggle. Birmingham had become an international embarrassment. Administration representative

65. *The Nation - RACES: Freedom-Now*, TIME, May 17, 1963, at 23. The altered view did not necessarily extend to the movement's adult leadership. Two paragraphs later the magazine described King as "the Negroes' inspirational but sometimes inept leader." *Id.*

66. *Ominous Spectacle of Birmingham*, LIFE, May 17, 1963, at 29.

67. See BRANCH, PARTING THE WATERS, *supra* note 3, at 764-81.

Marshall Burke of the Justice Department negotiated between white business leaders, black business leaders, and protest leaders. Finally, on Friday, May 10, after an all-night negotiating session and after Attorney General Bobby Kennedy raised enough cash from northern union leaders and others sympathetic to the administration and the cause to bail out all protesters in the city's jails, a settlement was announced. All who had been jailed would be freed; public facilities in the city would be desegregated within ninety days; and there would be further negotiations on better jobs for blacks and improved race relations.⁶⁸

Some criticized King then, and later for selling out the movement under pressure from the Kennedy administration, but then, as so often, King was caught between powerful conflicting pressures. King was committed to nonviolence and to reaching out to all Americans. He became the national figure that he did in part because he insisted on trying to engage all of white America in his campaigns. In trying to reach out to all Americans, he accepted compromise on issues that many—on both sides of the controversy—believed were matters of uncompromisable principle.⁶⁹

On Saturday, May 11, King's worst fears about the Birmingham campaign were nearly realized. After a large Klan meeting that night outside of Birmingham, the city was startled by a series of bomb blasts. A bomb blew out the front of King's brother's house; a second bomb went off later that night at the motel where King was staying. Somehow there were no serious injuries in either incident. Angry crowds of blacks quickly gathered at the bombing locations, furious at the all-too-familiar effort to terrorize blacks with bloodshed. King and his brother made passionate pleas for nonviolence that were largely, though not entirely, heeded by those who had gathered in the streets. The situation rapidly worsened when Alabama state troopers, sent in by George Wallace over the objection of Birmingham's police chief, aggressively moved in to disperse the crowds. Riots followed, buildings and cars were burned, a police officer was stabbed. Order in the city only returned with the coming of

68. See *id.* at 786-91; GARROW, *supra* note 3, at 258-59.

69. For a generally critical view of King's agreement to the settlement from a pro civil rights perspective, see ESKEW, *supra* note 3, at 288-97. See also *id.* at 299-331.

daylight. Later that day, Sunday, May 12, President Kennedy signaled his backing of the Birmingham accord by moving federal troops to bases in Alabama where they could be called upon if needed.⁷⁰

Somehow, in the days to come, the settlement held. Neither side gave way to recrimination, and the risk of widespread violence subsided. The long difficult work of transforming race relations in the city began. Meanwhile, the center of civil rights struggles moved to other parts of the nation, but with one critical change. Now the movement was on the offensive. Now that it had the nation's attention, and to some extent its sympathy, bigger gains seemed possible. The political center of gravity in the nation on race issues had shifted, making possible, though certainly not inevitable, the string of civil rights achievements that followed in the next two years.

VI. LESSONS LEARNED—OUR FREEDOM ADVOCATES

We come now to that point in our story where we must consider its lesson. What did all this sound and fury signify? What changed because of Birmingham? The question defies a definitive answer, for human events have a complexity that resists simple explanation.⁷¹ As soon as one consequence is identified, a set of rival arguments concerning effect will emerge. In the time remaining here we must be satisfied with a quick look at Birmingham's legacy through the experiences of our original trio of freedom advocates. We can see what Birmingham meant to each of them, and what it did not.

A. Kennedy

For John F. Kennedy, 1963 was the year he got religion with respect to civil rights. He said he felt sick at the widely-reprinted pictures of a police dog leaping at a Negro woman.⁷² The Birmingham campaign and Kennedy's repeated confrontations with southern governors over the integration of southern universities finally

70. See BRANCH, PARTING THE WATERS, *supra* note 3, at 793-800; GARROW, *supra* note 3, at 258-61.

71. For suggestions of immediate impact, see PATTERSON, *supra* note 4, at 480-81.

72. See PATTERSON, *supra* note 4, at 480.

convinced the President that this was a battle he had to join rather than avoid.⁷³

On June 11, 1963, in his first major address on civil rights, Kennedy announced his sponsorship of new civil rights legislation. Speaking from the White House he said:

We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.

The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark, cannot eat lunch in a restaurant open to the public, if he cannot send his children to the best public school available, if he cannot vote for the public officials who will represent him, if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place? Who among us would then be content with the counsels of patience and delay?⁷⁴

After a brief nod to history and Abraham Lincoln's Emancipation Proclamation a century earlier, Kennedy incorporated civil rights into his cold war vision of freedom:

We preach freedom around the world, and we mean it, and we cherish our freedom here at home, but are we to say to the world, and much more importantly, to each other that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have

73. On Kennedy's change of heart generally, see BRAUER, *supra* note 12, at 246-64. In a later visit to the White House, Fred Shuttlesworth said that President Kennedy recognized the pivotal importance of the Birmingham campaign. Shuttlesworth recalled: Kennedy . . . used these words. . . . "But for Birmingham, we would not be here today." RAINES, *supra* note 3, at 143.

74. STONE, *supra* note 8, at 80. The particular occasion for the civil rights speech made on June 11, 1963, was Kennedy's decision to federalize the Alabama National Guard in order to secure the court-mandated enrollment of two black students at the University of Alabama. Governor Wallace had gone to dramatic lengths to prevent the university's integration. See REEVES, *supra* note 10, at 514-23.

no class or caste system, no ghettos, no master race except with respect to Negroes?

Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them.⁷⁵

As if to signal the difficulties still ahead for the civil rights cause, on the same night as Kennedy's speech, civil rights worker Medgar Evers was shot to death outside his home in Jackson, Mississippi.⁷⁶ Then in November of 1963, Kennedy himself was shot to death in Dallas.

The new President, Lyndon Johnson, made civil rights legislation a major priority. A southerner and congressional veteran, Johnson pushed through the Civil Rights Act of 1964, followed by the perhaps even more important Voting Rights Act of 1965. Together they represented civil rights legislation more significant than any that had been passed since Reconstruction, nearly a century earlier.⁷⁷

B. Wallace

George Wallace meanwhile continued down the path he had started when he won election as governor. Using the politics of race and his own populist charm, he became one of Alabama's most popular governors. He waged a third-party campaign for president in 1968, winning thirteen percent of the popular vote. In 1972, while running for the Democratic nomination for the presidency, Wallace was shot and permanently paralyzed, ending his national political career.⁷⁸

In later years, as blacks won the vote in Alabama due to changes in federal law, and the state's racial politics changed, Wallace became reconciled to civil rights. Wallace claimed that he had never been a bigot, that he always cared for the downtrodden, including blacks. He died in 1998, having devoted much of his last years to

75. STONE, *supra* note 8, at 80-81.

76. See PATTERSON, *supra* note 4, at 481.

77. See *id.* at 542-46, 584-87 (discussing the passage of this legislation).

78. See generally CARTER, *supra* note 14 (giving an overview of Wallace's political career).

salvaging his political image on the racial front.⁷⁹ But in one sense, his private views must be irrelevant. Wallace's fame and political success were built on racial bigotry. Thus, if there is a character lesson here, it is that in politics the character that matters most belongs to the electorate, not the politician.

C. King

As for Martin Luther King Jr., in September of 1963, he ascended to a unique place in American life with his "I Have a Dream" speech at the close of the March on Washington ceremonies. In succeeding years, King continued his difficult and often thankless role

79. It is true that before his second gubernatorial campaign, Wallace's racial views were moderate for a Southern politician. See, e.g., JOHN HAYMAN, BITTER HARVEST: RICHMOND FLOWERS AND THE CIVIL RIGHTS REVOLUTION (1996). In the text, the Alabama Attorney General from Wallace's first administration described Wallace as a humanitarian in his younger years who then turned into an open and virulently hostile racist. See *id.* at 232-33. Speaking of Wallace later, Hayman said:

He literally despised that race of people. It got to be the talk of Capitol Hill. You could walk in his office, and he was so torn up over this thing you couldn't even talk to him. If you went in and tried to talk about anything, he would rant and rave about these damn niggers. These niggers this and these niggers that! . . . He had the meanest folks around him. He had some of the worst racists around him you ever saw. I know of two of the men very closely associated with him who said, 'I don't believe in segregation. I believe in slavery.' And then they'd laugh.

Id. at 233; see also E. CULPEPPER CLARK, THE SCHOOLHOUSE DOOR: SEGREGATION'S LAST STAND AT THE UNIVERSITY OF ALABAMA 168 (1993). Even before going into politics, Wallace had been an ardent defender of segregation. During World War II he had impressed his fellow soldiers, not always positively, with his spirited arguments in favor of white supremacy during his service in the Pacific. See CARTER, *supra* note 14, at 62.

Wallace's personal racial views and his efforts at the end of his life to demonstrate that he was not a racist were the themes of many of his obituaries. See, e.g., Raines, *supra* note 15, at B10; Haygood, *supra* note 15, at A1; Deborah Sharp, *Wallace Remembered for Racist Rants, Redemption*, USA TODAY, Sept. 17, 1998, at A1; *Segregationist Figure George Wallace Dies*, L.A. TIMES, Sept. 14, 1988, at A1.

Wallace's approach to racial politics may have been summed up by this observation he made to a reporter concerning his early political success: "I started off talking about schools and highways and prisons and taxes—and I couldn't make them listen. . . . [T]hen I began talking about niggers—and they stomped the floor." CARTER, *supra* note 14, at 109.

as national leader of conscience. Even as he was bitterly denounced by the young and radical for weakness and compromise with the white establishment, he antagonized that establishment, including its then-powerful liberal branch, by becoming an early opponent of the war in Vietnam, and by taking his campaign against racial and economic injustice to the north.⁸⁰

King was shot dead on the balcony of a Memphis motel on April 4, 1968, while trying to help settle a garbage men's strike. Two months later, presidential candidate Robert F. Kennedy was fatally shot at the Ambassador Hotel, not far from where we are today. Kennedy, who as Attorney General had strongly opposed the Birmingham campaign, had in the intervening years been converted to the cause of civil rights and became one of the nation's most effective and passionate advocates for racial and economic equality.⁸¹

And here I hope you will forgive a small digression. We justly celebrate our long traditions of democracy in this country. We celebrate our electoral system for the way it brings peaceful change. But in this celebration we should not forget our history of political gunfire. We should also acknowledge the violence that, in arbitrary and perverted ways, has too often changed the course of the nation.

VII. FREEDOM AND THE LAW—CHANGING HEARTS AND MINDS

You will have noticed that in this law school talk I have not said much about law and lawyers. That is not because legal matters are unimportant to this freedom story. The success of the Birmingham campaign was built on the earlier legal victories of the NAACP and its litigation campaign against segregation that had begun well before World War II. Without the work of lawyers like Charles Houston and Thurgood Marshall, and judges like Earl Warren establishing the legal wrongness of segregation, it would have been nearly impossible for the Birmingham protesters to win their moral argument with white America. Nor would this episode have the place that it does in our history without the landmark federal legislation that it, in part, inspired.

80. See BRANCH, *PILLAR OF FIRE*, *supra* note 24, at 611.

81. See PATTERSON, *supra* note 4, at 692-93.

The reason I have avoided the explicitly legal is that today I wanted to talk about law from the outside, not the inside. I wanted to consider how nonlegal ideas and events can shape the law. I wanted to remember a little about how the law looks and feels to those who have never been to law school.

In the first year of law school we teach students how to separate the law from life, how to pull out of life's complexities the few key principles which decide discrete legal disputes. Yet the best lawyers know that law is much more than legal analysis. They know how to reweave the cloth of life, with legal principles intertwined with the rich warp and weft of human experience. Knowing this, we should see Martin Luther King Jr. as more than a preacher and a protester, but also a legal figure.

King's Christian, nonviolent philosophy gave a spiritual resonance to the civil rights struggle that made technical legal arguments in opposition sound thin and phony. In similar fashion, the Birmingham campaign offered powerful images of freedom-fighting that affected our statutory law, and even our Constitution, by providing new paradigms of freedom's violation. Today's Fourteenth Amendment owes as much to the battles of Birmingham, Montgomery, and to Selma, as it does to those of Fort Sumter or Gettysburg.

VIII. OUR NEIGHBORHOOD AND ITS CHILDREN

I want to close with a few thoughts about the here and now. Remembering the young in the Birmingham jail, I think about the children of this downtown Los Angeles neighborhood: the elementary schoolers with their bright-colored backpacks, moving in clumps with their brothers and sisters, clutching mothers' hands and stroller bars on their way to and from the 10th Street Elementary School here off of Olympic Boulevard, children for whom the names Montgomery and Birmingham must have little meaning, whose families know more about Michoacan than Mississippi. And I wonder what their freedom struggles will be. I wonder what they will be for all the other children of this perhaps-great city.

I doubt if their struggles will look, or sound, much like Birmingham. Perhaps they will be about economics rather than race, perhaps less about government oppression than the accumulation of power in private hands; I don't know. What I would say to them,

what I say to you, is that freedom does not come easily or automatically; its achievement requires the commitment of minds and hearts and sometimes our bodies.

In thinking about freedom, I urge you lawyers and lawyers-to-be not to take too narrow a view of law. The law may be comprised of statutes and regulations and constitutions, but it is not just these. The law does not sing, but sometimes it hears our songs. The law may be about logic and rules set by the powerful, but sometimes it can be moved by love. If you ever doubt this—and we all do sometimes—remember Birmingham.